

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION**

**CLARA S. MITCHELL, as the personal
representative of BOBBY L. MITCHELL,
deceased,**

Plaintiff,

v.

**DEBBIE A. SWEET and STATE FARM
MUTUAL AUTOMOBILE INSURANCE
COMPANY,**

Defendants.

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Civil Action Number:

3:05cv1210-WKW

**DEFENDANT STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S
RENEWED MOTION FOR ADJUDICATION OF MEDICARE
SUBROGATION INTEREST**

Comes now the Defendant State Farm Mutual Automobile Insurance Company (hereinafter, "State Farm") in the above-styled action and hereby renews its Motion for Adjudication of Medicare Subrogation Interest, and as grounds in support thereof states as follows:

1. On November 29, 2006, State Farm filed its Motion for Adjudication of Medicare Subrogation Interest.

2. On December 21, 2006, State Farm then filed its Motion to Join Secretary of the Department of Health and Human Services as a Real Party in Interest or as an Indispensable Party.

3. On February 13, 2007, this Court entered an Order joining the Secretary of the Department of Health and Human Services (hereinafter, the "Secretary"), finding that "the

joinder is appropriate to avoid possible injury to the defendant and necessary to afford complete relief among the parties.”

4. On April 24, 2007, R. Randolph Neeley entered his appearance as attorney of record for the Secretary.

5. The dispute regarding the subrogation interest is clearly between the Plaintiff and the Secretary, as State Farm only wants to make sure that each party receives the money that each is legally entitled to receive. The legal issue seems to be whether Medicare is entitled to subrogate against the wrongful death recovery. State Farm has not discovered an Alabama state court decision nor a Federal Court decision that has addressed the interplay of ALABAMA CODE §6-5-410 and 42 U.S.C. 1395y(b)(2).

6. As such, State Farm suggests that this Court set a briefing schedule for both the Plaintiff and the Secretary as to the subrogation issue, after which this Court can rule on State Farm’s Motion for Adjudication of Medicare Subrogation Interest.

s/ Stanley A. Martin

Stanley A. Martin (MAR049)

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Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 26th day of April, 2007, electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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s/ Stanley A. Martin

Stanley A. Martin

S. Allen Martin, Jr.